

APPROVED

**ZONING BOARD OF APPEALS
JULY 28, 2016 - 7:00 P.M.
62 Friend Street, AMESBURY**

Meeting called to order at 7:05 PM. Chairman reads the agenda.

Present: Sharon McDermot, Matt Vincent, Matt Sherrill, Donna Collins, David Haraske, Bob Orem.

Absent: Bill Lavoie

Also Present: Denis Nadeau, Building Inspector, Joan Baptiste, Recording Secretary.

MINUTES:

May 26, 2016

**Motion by Bob Orem to approve the minutes of May 26, 2016, second by Donna Collins.
AIF**

PUBLIC HEARINGS:

Ryan M. Johnson, c/o Arthur Johnson, 13 Madison Street, Amesbury, MA is seeking a **VARIANCE** under the Amesbury Zoning Bylaws, Section VI.B, to create a buildable lot with insufficient frontage and insufficient width. The applicant is proposing to create one additional lot for a single family home. The proposed structure will be located **at 48-50 Pearl Street**, Amesbury, MA, in an R-8 zoning district, precinct 2

Sitting: Matt Vincent, Bob Orem, Donna Collins, Matt Sherrill, Sharon McDermot.

Paul Gagliardi, Attorney at Healey, Deshaies, Gagliardi, & Woelfel represents the applicant. You have before a plan that was prepared by Cammett Engineering which shows the boundaries of the existing lot. The applicant has property that borders on both Pearl Street and on Collins Street. There is a total of 29,060 sq. ft in the lot. The lot is L-shaped from Pearl Street and wraps behind two other lots on Pearl Street. What we are proposing to do is to create two lots one of which will have the existing two-family house on 12,040 sq. ft which meets the current requirement of the zoning bylaw for a two-family. And we are proposing to create a buildable lot with 17,020 sf of area and it will have 33 feet of frontage according to Cammett Engineering. Collins Street is 33 feet wide which is what we are using as a basis for this lot. I want to make clear that the lot that we are proposing is in an R-8 district which requires 8,000 sq. ft. of area and 80 feet of frontage. The applicant has three and a half times that area and is seeking to be able to make a reasonable use of the property and to create one additional lot with insufficient frontage and insufficient width as noted in the application. One of the things that we have to prove to get a variance is that we have to show circumstances relating to soil conditions, shape or topography, to land and structures. I have a list of all the abutters that were notified within three hundred feet and the assessors plan. What you see is the map and lot numbers, the street address, the owner's name, the area of their lots and the frontage that they have. What you will see is 92% of the lot owners have a smaller lot than what we are proposing off Collins Street. You'll

note that the most direct abutter is 44 Collins Street which is Justin Tessier. His lot has 5,662 sf with 100 feet of frontage on Collins St; you'll see that 44 Pearl Street which is owned by Alexandria Towne has 8,712 sf and 90 feet frontage; 52 Pearl St owned by Alexander Wilson has 3,920 sf with 50 ft of frontage; David Donegal, 54 Pearl Street has 5,227 sf and 53 ft frontage; Ted Van Nahl 58 Pearl St, 16,988 sf with 80 feet of frontage is one of the biggest lots in the area but it's still smaller than the one we propose.

You'll also note that the people directly across from us at 45 Pearl Street, Jennifer Baker has a lot that is 6,534 sf and 66 feet of frontage; Kelly Conroy at 47 Pearl street has a lot of 3,049 and 45 feet of frontage which is only 12 feet more than what we are proposing and at 51 Pearl Street the lot size is 3,920 with 60 feet of frontage.

What I'm trying to show you is that what we are proposing is not out of line, it's actually larger than what is typical of the area and also our existing lot with 29,000 sf is a unique lot in the zoning district in which it is located and it's L-shaped. If you look at the plan one of the reasons I made copies of the plans is to show you on map 54 our lot is highlighted in yellow all the other lots abutting it or in the general area of this lot, you will see that there is not another single lot any where comparable to what we have here. A 29,000 sf lot in an R-8 zone is huge.

I'm not proposing that the lot that we want to create, creates the hardship – what I'm proposing...I would agree with the opposition's attorney that we would be creating our own hardship but we're not creating our own hardship. The existing frontage on Collins Street is not something that we are creating...it exists. In a Mass Appeals Court decision the court found that a hardship based upon shape, which is what our petition is based upon, existed because of a number of different factors that the court took into consideration. First of all in that case it was pork chop shape, ours is an L shape. I think they are comparable but different as far as proving hardship based upon shape. They are unique. As I mentioned to you, you will not find another lot in this zoning district, I do not believe, at least not in the proximity of our lot that is L shaped. No lot in the area had a similar shape. We found that it is different in most shapes in the area – not going to find a lot in either one of those assessors plans that is similar. We found that the lot exceeded the size of most surrounding lots by a significant amount. I think the information that is on these sheets will show you that our lot, the 29,000 sf lot exceeds the size of almost every lot. There are 4 lots that are larger than the one that Mr. Johnson currently owns. There is no question that our lot exceeds the size of most surrounding lots and I found that the existing topography would accommodate a driveway from the public way to the main portion of the lot. In this case, they were also looking to get a variance because of frontage. The courts have concluded that special circumstances as to the shape are sufficient to support the required findings for a variance. I want to rebut a few things that were in Attorney Mead's letter to you. (I just received a copy of it this afternoon) but I want to go through a few things. First of all she states in her letter that the lot is a preexisting nonconforming lot. That is not true. Our lot conforms with the zoning. As I said, we're in an R8 zoning district the required area in an R8 district is 8,000 sf for a single family, 12,000 sf for two family and we have 29,060 sf. The frontage required in the R8 district is 80 ft, our existing lot has 90.43,ft of frontage on Pearl St so it is not a preexisting nonconforming lot. We may have a preexisting nonconforming structure on our lot but that has nothing to do with what we are requesting tonight. It's an existing structure it will be on a 12,000 sf lot (proposing) and had nothing to do with the variance we are requesting. She purports that egress from Collins St is used as a driveway and parking area for Tessier Auto Body. According to our surveyor who did extensive research in order to prepare this plan for you today, Collins Street goes all the way up to our property line. If you look at the

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assessors maps you will see that Collins Street goes right up to our property line. There is no purported Collins Street, it exists. The mere fact that the Tessier's are using it to park vehicles and whatever else they may be using it for it doesn't negate the public's right to use it and our right to use it as access to our property. Attorney Mead indicated that we are creating our own hardship. We're not creating our own hardship. As I indicated, the hardship is not based upon the lot that we are trying to create. The hardship is based upon the lot that exists...the 29,060 sf lot that is L shaped, that has frontage on two streets in the City of Amesbury and we're seeking to create a lot so that we can get access from Collins Street which may be less than 80 feet but I would submit that our access is totally adequate. What is the reason for a frontage requirement in the bylaw? The reason for a frontage requirement in the bylaw is for access. There is no way that we do not have adequate access if we build a driveway coming off of Collins Street. The topography is sufficient to enable us to do that.

As I mentioned earlier we have three and a half times the required area. The applicant needs to make a reasonable use of this property. This is one of the few ways. Is there another way to do this? Yes. We could come back and request a conversion for a two-family to a three-family and build an addition on the existing two family but is that really the best use of this property? I don't think so. Because you would have to build it such that it would be in the most congested part of the lot. For that reason we think this is the best use. We could also, if we were forced to we could create our own frontage. We could create a cul de sac off the end of Collins Street. We could create a hammerhead off the end of Collins Street. We have plenty of land in order to do that. But again, is that really what we want to force this applicant to do. Is it really going to serve the purpose of access for what we are proposing. I think not. And just as you on Chester St. approved a variance for a lot that had 15 ft of frontage. If that had adequate access, this certainly does it has twice the width and certainly has adequate access. If your concerned about the ability of fire trucks to get in there certainly the fire department made it very clear that in a situation like this maybe what needs to be done there needs to be a condition that we put in a sprinkler system inside the house as was required on Chester St on a lot that had far less frontage. We have a lot of abutters here tonight and I'm sure they are not here to support us. Just like on Chester Street they were not here to support us. Frankly I would be here not to support this if I was abutting it. Everyone, if they have an open field behind their house, would want it to stay open... "not in my backyard". How many times do we see that here at the zoning board and at the planning board. But the point is that this is a 29,000 sf lot in an 8,000 sf zone. The lot that we are proposing is larger than any of our immediate abutters and larger than 92% of those who received notice of this hearing tonight. We also need to be showing you the little enforcement provision of the bylaws would involve substantial hardship, financial or otherwise. I submit this is not a personal financial hardship. The hardship here is that if the variance is not granted we will not be able to make an effective use of the property. This is not personal, this has to do with the property. It's a 29,000 sf lot. We ought to be able to make adequate use of it. You look at this plan. This is a huge field out back and it's great for the abutters to have that open space but we have a right to make a reasonable use of our property. If we have to build a road to build frontage, a cul de sac, we can do it, we've got plenty of land. There will be less green space, there'll be more asphalt. It will cost us money. It will create a financial hardship if we have to do that but I don't see what the benefit would be for the City of Amesbury. We have to show that the desired relief may be granted without substantial detriment to the public good. Where is the detriment to the public good? We're talking about one more house on 17,000 sf of land in an R8 zone which requires 8,000 sf. The area requirement is to prevent overcrowding. I

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don't think that building one house on a 17,000 sqf lot could in any way be considered overcrowding or detrimental. The overcrowding already exists on the existing lots. If you look at the size of some of the abutters; 7,000, 5,000 4,000, 3,000, 6,000. You look at these area of the lots of the people who received notice - a significant number of them specifically the ones that abut us 3,920 sf, 5,227 sf, 8,712 sf one or two actually comply with the zoning requirements. We have twice the area that the zoning bylaw requires. I would suggest there is no basis to determine there would be a substantial detriment and we also have to show that it can be granted without nullifying a substantially derogating from the intent and purpose of the bylaw. Again what is the purpose of the frontage requirement...it's access. I don't know anybody can say that 33 feet...if we bring a driveway off of that into a 17,000 square foot lot that we are somehow sacrificing access and the ability to access their property. If you look at the purpose of the width requirement. The width requirement was put into place because the city was tired of people creating strange looking lots and they wanted them to be more normal. They didn't want somebody who had 80 foot a frontage and come in sharply to enable to get more lots out of their property. Our width is predetermined. We can't do anything about it. It's an existing lot. Yes, we're trying to create a new lot but we're not creating any less width. We're working with what we have. I think the proposal before you not only meets the criteria for a variance but it is a good plan. It deserves and it should be approved by this board. It will be beneficial to the city. Maybe you're a direct abutter and you're on a 4,000 square foot lot and you've got 17,000 sf of open space behind you it's not going to be beneficial to you but is that not akin to taking Mr. Johnson's property for the benefit of the abutters. Should he be denied a variance because the abutters are enjoying open space behind them that they don't own, they don't pay taxes on, and Mr. Johnson is paying taxes on it. I ask you tonight to approve this variance so that we can create this lot and go from here.

Robert Orem you refer to 29,000 sf lot. Has the property been subdivided already?

Paul Gagliardi no .Mr. Cammett is showing you on this plan what we are proposing to do. But the lot is now 29,000 sf – it's one lot, no subdivision lines.

Matt Vincent what happens to the cars that are parked on what you're now saying is a public way?

Paul Gagliardi He's going to have to put them on his property I suppose. Nobody has the right to take over public streets. To deny somebody else the right to make a reasonable use of the property because somebody is using a street in a way that is not allowed.

Matt Vincent I drove by there this week and what struck me was how many cars were inoperable out there. I always assumed that it was a private way. I'm surprised to find out tonight that it's actually a public way where all of these cars are being stored.

Paul Gagliardi according to the information that Mr. Cammett has given me that is a public way. It's much like down at Drew's Tire right now, they are parking automobiles on R Street because it's been blocked off. He doesn't have a right to do that and if the R street bridge is ever re-done, he can't continue to park cars on there. This is similar. Collins Street is a way. Despite the fact that Mr. Tessier has been parking vehicles on there, he doesn't have any right to block the access on Collins St. He'll have to move them.

Matt Vincent have you had a certification or survey that stated that it was part of Collins St and a public way.

Paul Gagliardi According to Mr. Cammett, he did the survey which shows Collins Street going right up to our lot line.

Matt Vincent was there any confirmation from the DPW on that?

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Paul Gagliardi no – we could get it from the city clerk..they list all the streets. A lot of times it says “Collins Street to end”. Collins Street is shown on subdivision plans of that area. I can get a copy of that. Mr. Cammett has probably already obtained that otherwise he wouldn’t represent it the way that it is.

Matt Sherrill at this time I will entertain other people who wish to speak for or against this application.

Attorney Lisa Mead, representing David Donavel and Jean Landis who are abutters at 54 Pearl Street. (distributes a satellite view of the area in question). The map that I just provided to you is just a satellite map from Google Maps that I thought was important because I heard one of the members struggling with the sterile plan that we all have provide to the board which shows on a plan where the streets are – the satellite images tend to show house, streets, or use. I thought it was important to get a general bearing of where this property is in this neighborhood. I think it’s really important to start this out by saying let’s make no mistake about this; when the applicant purchased this property in 2012 he purchased it knowing the existence of the zoning bylaws, the size of the lot, the constraints of the zoning bylaws and he purchased it for a two family home. He has reasonable use of the lot that exists, the lot that is an L shape right now. He has reasonable use of that lot. It’s a two family home, it’s big, he may not like that but he has reasonable use of that property. As you know chapter 40A section 10 in your zoning bylaw name a number of criteria which attorney Gagliardi already went through which a person much meet in order to qualify for a variance. They must meet every single one of those criteria. They can’t meet most of them; they have to meet all of them. The courts have been very clear that they are to be applied strictly to each situation. In this instance, contrary to what’s been presented, the applicant is creating his own hardship. The lot that exists – the L-shaped lot – has sufficient frontage and has sufficient width. There is no hardship related to the lot that exists. When you divide the lot up as proposed, it becomes a little bit of an odd shape over on the left hand side of it because they need to get the area for the two-family house lot. But they have now created a new lot; it adds a new lot line. So you have two new lots created by the applicant. The new lot which is no longer L shaped has insufficient width and insufficient frontage. That is a lot created by the applicant. It is self-created. That’s the hardship, he created his own hardship. Insufficient width and insufficient frontage. The L goes away. There is no shape issue any more and what he’s left with doesn’t meet zoning. The neighbors while they may have smaller lots, I didn’t hear any that had 33 feet of frontage by the way, they may have smaller lots, they didn’t create those lots (I don’t think) they may be preexisting, non conforming lots I don’t know, I haven’t done the research on them. But it doesn’t matter that they’re smaller. It doesn’t matter that they have less frontage that are required under the zoning. This applicant is creating this lot with insufficient frontage and insufficient lot width. And it’s well settle law in Massachusetts as I have proposed to you that a person who creates self-created hardships do not qualify for the granting of a variance. The court has been very clear on that on any number of instances. A property owner cannot obtain a variance by creating his own hardship according to a number of cases. (states cases).

It’s interesting that Attorney Gagliardi mention the Poldan (?) case. That case was cited in the dissenting opinion in the Adams v. Brolley case which is the leading case on self created hardships. And what is very clear in that case that neither in the Poldan case nor another one, had the owner himself created the circumstances that rendered the lot nonconforming. It may be that there are instances where there are different shapes of lots and they have a lot of other

criteria that you can get a variance. But the Poldan case he didn't create his own hardship according to the dissenting opinion.

The applicant also suggests that he's going to suffer substantial financial hardship if he can't make this new lot. Again the cases are really clear. Substantial hardship can't be personal, because of lost profits, lost expenditures, or resale value are not proper for consideration.

Personal financial hardship was not a basis for a variance in the Barnstable case the supreme judicial court held that the fact that a more economical or practical use of land might be made if it were used as an apartment or for single family purposes in accordance with the zoning bylaw did not justify the granting of a variance. Just because it might be better to have a house on it rather than have it be open space, is not a reason to grant a variance. Personal financial hardship is not a reason to grant a variance. And in this instance, the property that is L shaped meets zoning requirements and it has a two-family house on it. He has reasonable use. There is not financial hardship there. He would like to create the back lot to build a house on so that would be economical enrichment. That would be nice but not a reason for a variance. Both the applicant is subject to the zoning bylaws and neighbors are allowed to rely on the zoning bylaws.

So you can characterize that it's nice to have an empty field in your back yard but the neighbors are also allowed to purchase a piece of property, look at the zoning bylaws that apply, look at the land around them and determine themselves what is the likelihood that the lot behind them will go away under the existing zoning bylaws. Doesn't mean they control it, doesn't mean that somebody can come in and ask for a variance or a subdivision but they have a right to make that determination. The existing lot while it meets zoning, if you slice it up it doesn't.

There is another case that has said the fact that a regulation may deprive the owner of the most beneficial use of the property does not create a hardship if a residence conforming to the requirements can be built. In that instance it was an empty lot so the owner wanted to make multiple units. It was going to be very expensive to build a sea wall and they had to make an elaborate septic system if they were going to do this single family home. They proposed four units, the court said no. Just because it's not economical doesn't mean you have the right to build four because it would be more beneficial to you.

In this instance the applicant would like the property to perform more beneficially than what currently exists. He doesn't have a right to do that because he's creating his own hardship. The neighbors request that you apply the variance standards strictly, as they should be, and look at the fact that the hardship that is being argued about here is self-created on the new lot.

Matt Sherrill are there questions from the board?

Matt Vincent reads a relevant passage from the case mentioned. It was a case where they wanted to swap pieces of property to create a conforming lot "Typically this situation arises when the owner of a larger track of land conveys to another a portion of that land that does not meet either the size or frontage requirements of the existing zoning code with the result that the new owner cannot build without relief from the regulations. It may also arise when the landowner conveys out conforming lots with the result on a non conforming lot." I think that was the active passage in this case because the rest of it was about this guy trying to create a conforming lot then having parts of it taken by eminent domain so it wasn't something that was self inflicted by him. While we have the discussion open, I would like to hear when you go through these cases, rather than just citation to them, how you distinguish them, what passages you're relying on, because I do think this is relevant for us in understanding how to deal with this.

Lisa Mead actually that passage was this one, you just read, the very important distinguishing characteristic of the Adams v Brolley case is just the issue you alluded to. The fact is that there was a taking involved. So this gentleman under Adams v. Brolley spent a lot of time reconfiguring lot lines because he wanted to change the size of his property. He did land swaps with his neighbors. So he had presented a plan that would allow him to create three or four conforming lots and in the process of doing that, the MDC came in and took a portion of the last lot. So it made it not to meet zoning requirements. In that case the court said, that's not self created. We have the plans in front of us that were created to meet all of the zoning requirements and then the state came in and took a portion of the land. So it was not self created and that is the distinguishing characteristic that says you may not create your own hardship.

Matt Sherrill on your letter you add "Finally I would add the applicant is actually to create two lots, a lot that fronts on Pearl Street and one that fronts on Collins Street. I respectfully suggest that both new lots require zoning relief in order to be created. Could you help us understand why you say that?"

Lisa Mead Counselor Gagliardi and I will have a disagreement on this. Here you have an existing lot, with a preexisting nonconforming structure, When the lot has a structure on it that is nonconforming it's considered a pre existing non conforming lot. This house does not meet the front yard set back. Therefore when you create a new lot both lots have to meet zoning requirements. So it's my opinion that the new lot created also needs a front yard set back variance for the existing two-family house.

John Clark, 35 Collins Avenue The only hardship that I see here affects the people at 52 Pearl Street and 54 Pearl Street. They are the ones that their back yard will be affected (even though they don't own it). The land of Tessier Auto that's shown as 44 Collins Street has been used by the Tessier family for over 50 years and it was used before that by Clovis Proulx.

Joseph Sielicki, 38-40 Pearl Street over the years there have been water issues. The back of my yard and the neighborhood floods when we get heavy rains. We get water in our cellars. Building a new house will only add to the problem. The small lots were created in the late 1800s when this area was still a part of Salisbury. The applicant is not giving any consideration to the neighbors. My main concern is the water.

Alex Wilson, 52 Pearl Street Before we bought our home, we researched the area and zoning bylaw and learned that it was a nonconforming lot so we were confident that nothing would be build on it. The property retains a lot of water. (distributes photos of lot with water). Our basement floods.

Justin Tessier, 44 Collins Street Has a 1963 map that shows Collins Street Extension with Collins Court. The end of the street is shown as paved then gravel beyond. We had the gravel area paved in 1970. Shows 1947 map – Tessier's building accessway went around the house to Pearl Street. My deed shows right of way to Pearl Street (given from James Hume).

Linda Burdick, 40 Madison Street I'm here to support the neighbor's in opposition whose properties will be affected.

Ted VanNahl, 58 Pearl Street In support of neighbors in opposition. Urges adherence to Zoning.

Timothy Fournier, 53 Pearl Street Lives across from property. In support of neighbors in opposition. Notes a culvert that was most always wet. Near the Tessier property, there is generally water coming down from the park.

Paul Gagliardi – Atty. Mead is misconstruing our basis for the hardship. The basis of the hardship is the existing lot. We cannot make a reasonable use of this property. 29,000 square

feet of land in an R8 zone – is it reasonable use to have one 2-family house on it where everyone around us has 3, 4, 5, 6 thousand square foot lots? How can anyone look at this lot and realistically think that nothing would ever be built on it. Regarding the water: I've never been to a Planning or Zoning meeting where neighbors didn't have a concern about drainage and water in their basements. The fact of the matter is we cannot artificially drain water onto an abutters property. We have to deal with it. We can't solve the existing water problems that people have in their basements. Overcrowding: 92% of the lots of people who received notice of this hearing are smaller than what we're proposing. 12,000 sq. ft for the two-family and 17,000 sf for a new single family home. I disagree with Atty. Mead, we are not doing anything to create a new nonconformity for the two family lot. And the lot that we are proposing absolutely conforms in every way. What doesn't conform is the preexisting two family structure that does not meet the front yard set backs. In every other way it conforms.

Matt Sherrill could you touch on Atty Mead's comment that you are creating your own hardship on that second lot? It appears to me that it may be true.

Paul Gagliardi I disagree. If you look at the case that I referenced, you have to take a lot of things into consideration. Looking at the whole lot, the shape of it (L shape), with 90 feet of frontage on Pearl Street and 33 feet of frontage on Collins Street. That exists we're not changing anything. The lot has 29,000 sq. feet of area. That exists. The hardship here is the fact that we cannot ... that second lot demands that it be allowed to have more than one two family structure on it for reasonable use of that property a two family structure on 29,000 sf in an R8 zone is an underused lot. Without the variance to enable us to create this second lot, we're being denied a reasonable use. The hardship is not self-inflicted. We can create our frontage by building a cul de sac or hammerhead. – that will create a hardship. It's not good planning.

Matt Sherrill could you also help me understand on question #4 – it says what would be the substantial detriment to the public good if granted... Tessier Auto Body has been operating in that spot for 50 years. So for 50 years, they've been backing in and out of that garage without any worry or danger of running over anyone or running into anything. Could you help me understand how that's not going to be some sort of safety factor?

Paul Gagliardi Tessier Auto Body is a commercial use in a Residential zone. We are proposing a use that complies with zoning. There are people who back out onto busier streets. This will only be one house.

Donna Collins asks about 33 feet, the plan shows 39 feet.

Paul Gagliardi the 39 feet includes some of Tessier's property.

Matt Sherrill any other questions of Attorney Gagliardi from the Board?

I will ask the audience one last time if anyone would like to speak and then I'm going to close the meeting

Lisa Mead Mr. Chairman I think it would be helpful if the board looked at the plans. The hardship that is claimed has to be related to the relief that is sought. Mr. Gagliardi is saying that there is an L shaped lot which is true. The existing lot is L shaped but it meets zoning requirements albeit front yard set back. The adequate frontage doesn't use the frontage on Pearl Street – It has adequate frontage and adequate lot width – the existing lot. It's big, I get it. He then divides the lot up so that it's no longer L shaped. We have a new set of lots. He adds the lot line... Lot 1 and Lot 2. Now the hardship goes away because the L shape is gone. He's now created a new lot with insufficient frontage albeit existing, it wasn't the frontage on the other lot, it existed there but it wasn't the frontage for the other lot. So it's insufficient frontage and insufficient lot width. I'm very clear about that, without question. I would just like to point out

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the issue about reasonable use. I pointed out in my memo and I've said it before, there's a two family lot on this house, this gentleman bought this house in 2012 for whatever price he paid and now it would be nice if he made more money on it. That doesn't mean that this is not a reasonable use of this lot.

Matt Sherrill one last time, would anybody wish to speak before I close the meeting.

Justin Tessier I watch the water every year and he understates the value of that but it is a 29,000 square foot lot that's been around for well over 100 years in the premise. It was actually an orchard and there was a pond there. There's so much water in that area. I have a crushed stone floor in my office.

Denise Jutras Barnard, 36 Pearl Street lived on Pearl Street entire life - we used that area to ice skate. Here to support my neighbors in opposition.

Timothy Fournier, 53 Pearl Street houses with less frontage – houses were built in the late 1800s. Laws change.

Joseph Sielicki, 38 Pearl Street if you build a house, water has to go somewhere.

Matt Sherrill I hope everyone feels they have had the opportunity to speak. Does the board have any questions for either Attorney Gagliardi or Attorney Mead before we close and discuss.

Motion by Robert Orem to close the hearing and discuss, second by Sharon McDermot.
AIF

Matt Sherrill we have in front of us an application to create a lot which has insufficient frontage and insufficient width. We obviously have to agree to move on with the substantial hardship. So that's the hurdle that we have to go over at this point. I'm willing to listen. What is the substantial hardship?

Robert Orem There are alternatives to development they could put in a cul de sac and create frontage so that the lot could be conforming in terms of frontage but economics is the issue then that not a basis for substantial hardship.

Matt Vincent that is the piece I keep getting stuck on. I think that Mr. Gagliardi's point about people coming to talk about water all the time. I'm not doubting the veracity or the sincerity of what you're saying but everyone says that. (To Justin Tessier) if I was there and I had the opportunity to clear out those cars I would be taking this house over that. You have a wonderful business but I look at this and say I can't justify not doing this because someone has been using a public way. I would say if we go forward with this it should be subject to a stipulation that the DPW certify that it is in fact.... For example Ellis Court. They removed that old garage and put some nice houses there. I think a house going in here would be a positive to the neighborhood but I do come back to the issue of creating your own hardship. This is actually from Land v. Taunton (2010 case). This is the court going back over the position that it's taken in the past. A property owner cannot obtain a variance by creating his own hardship. Generally hardships are deemed self-created when a property owner by some overt act transforms what was once a conforming parcel into a nonconforming one. Despite the fact that I think there could be a lot of benefits to the neighborhood I know people want to look out their window and see an open lot, the reality is that's not public space. Someone should have the right to build on a lot if it's conforming even though it may interfere with your ability to enjoy what you would like to think was your back yard. In this case, I can't get away from the case law.

Robert Orem I agree with what Matt said and the case law that has been cited. You can't create your own hardship and use that to request a variance.

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Matt Vincent if we were to deny the application Mr. Johnson has the opportunity to appeal it and he could put this in front of the court and let the judicial body that's been dealing with where there find exceptions to this whether it is an appropriate exception or not.

Donna Collins the only thing that is holding me back from this is creating your own hardship. It's too bad if people can't look out at an open field anymore. I am concerned if Tessier is using the street, I wouldn't want cars being worked on in front of my house. The creating hardship is blocking me.

Sharon McDermot I would be in agreement with what the board members have said. I was concerned that the neighbors feel that these people should not be allowed to build on their own property. As the board members have said, it's not your property. Creating your own hardship is based on what we've discussed here.

Matt Sherrill it seems like we're going to have a hard time getting past what is the substantial hardship on this case. I'm willing to listen to what the board would like to do.

Motion by Matt Vincent to deny the application for Variance in the matter of 48-50 Pearl Street subdivision, second by Robert Orem.

Matt Sherrill if we can't get past the substantial hardship question then, as it was stated, they have to meet all five of the questions have to be affirmed.

VOTE (to deny)

| | |
|-----------------|-----|
| Matt Vincent | Yes |
| Robert Orem | Yes |
| Donna Collins | Yes |
| Matt Sherrill | Yes |
| Sharon McDermot | Yes |

Matt Sherrill the application has been denied. You have the opportunity to appeal our decision.

Motion to adjourn the meeting at 8:35 pm was made by Sharon McDermot, seconded by Donna Collins. AIF.